

MAR 06 2006

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PATENT, TRADEMARK, COPYRIGHT
AND UNFAIR COMPETITION LAW
AND RELATED LITIGATION

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TRUMAN A. HERRON 1835-1978
EDWARD B. EVANS 1836-1971

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March 6, 2006

FACSIMILE COVER SHEET

To: Examiner Joshua D. Schneider
Art Unit 2182
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22213-1450

From: Scott A. Stinebruner
Reg. No. 38,323

Re: U.S. Patent Application
Serial No. 09/456,211
Filed: December 7, 1999
Applicant: Troy David Armstrong et al.
Art Unit: 2182
Confirmation No.: 6131
Our Ref: IBM/112

Fax: 571-273-8300

Enclosures:

Fax Cover Sheet containing Certificate of
Facsimile Transmission (1 page)
Transmittal containing Certificate of Facsimile
Transmission (1 page)
Petition under 37 C.F.R. § 1.181(a)
Requesting Withdraw of Holding of
Abandonment (2 pages)
Exhibit A: Docket Record for U.S. S/N
09/456,211 (2 pages)
Exhibit B: Signed Issue Fee Transmittal
(in duplicate - 2 total pages)

Pages: 8 (including cover sheet)

**MESSAGE/COMMENTS
OFFICIAL****CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this paper and the enclosures noted herein (8 total pages, including cover sheet) is being facsimile transmitted to the Commissioner for Patents at facsimile telephone number 571-273-8300 on March 6, 2006.

Judith L. Volk
Judith L. Volk

March 6, 2006
Date

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If transmission is interrupted or of poor quality, please notify us immediately by calling (513) 241-2324 and ask for the sender's assistant. **OUR FAX NUMBER IS (513) 241-6234.**

MAR 06 2006

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IBM/112
Confirmation No. 6131**CERTIFICATE OF FACSIMILE TRANSMISSION**

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Judith L. Volk
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March 6, 2006
Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Troy David Armstrong et al.

Art Unit: 2182

Serial No.: 09/456,211

Examiner: Joshua D. Schneider

Filed: December 7, 1999

Atty. Docket No.: IBM/112

For: FAIR ELEVATOR SCHEDULING ALGORITHM FOR DIRECT ACCESS
STORAGE DEVICE

TRANSMITTAL

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

We are transmitting herewith the attached:

Fax Cover Sheet containing Certificate of Facsimile Transmission (1 page)
Transmittal containing Certificate of Facsimile Transmission (1 page)
Petition under 37 C.F.R. § 1.181(a) Requesting Withdraw of Holding of Abandonment
(2 pages)
Exhibit A: Docket Record for U.S. S/N 09/456,211 (2 pages)
Exhibit B: Signed Issue Fee Transmittal (in duplicate) (2 total pages)

Please charge any additional fees or credit overpayment to Deposit Account No. 23-3000.
A duplicate of this sheet is enclosed.

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By: 

Scott A. Stinebruner Reg. No. 38,323

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MAR 06 2006

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IBM/112
Confirmation No. 6131**CERTIFICATE OF FACSIMILE TRANSMISSION**

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Judith L. Volk
Judith L. Volk

March 6, 2006
Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Troy David Armstrong et al. Art Unit: 2182
Serial No.: 09/456,211 Examiner: Joshua D. Schneider
Filed: December 7, 1999 Atty. Docket No.: IBM/112
For: FAIR ELEVATOR SCHEDULING ALGORITHM FOR DIRECT ACCESS
STORAGE DEVICE

PETITION UNDER 37 C.F.R. § 1.181(a)
REQUESTING WITHDRAW OF HOLDING OF ABANDONMENT

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

On February 27, 2006, the undersigned attorney received a Notice of Abandonment from the USPTO dated February 22, 2006 in the above-identified patent application filed. According to the Notice of Abandonment, this application was deemed abandoned in view of Applicants' failure to timely pay the issue fee in reply to the Notice of Allowance and Fee(s) Due dated October 7, 2005. Pursuant to 37 C.F.R. § 1.181(a), Applicants hereby request reconsideration of the holding of abandonment and request withdraw of the abandonment, as the Notice of Allowance and Fee(s) Due was not received by Applicants. This petition is being filed within two months from the mailing date of the Notice of Abandonment, and is therefore timely filed.

The undersigned attorney of record states that, based upon a search of the file jacket and docket records for the above-identified patent application, the Notice of Allowance was not received by the undersigned. A copy of the docket record showing where the non-received Notice of Allowance would have been entered had it been received and docketed is

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Serial No. 09/456,211
Petition to Withdraw Notice of Abandonment
Responsive to Notice of Abandonment of 02/22/2006
IBM Docket RO999104
WH&E IBM/112
K:\ibm\112\request for Withdraw of Notice of Abandonment

attached hereto as Exhibit A as documentary proof of non-receipt of the Notice of Allowance. In particular, page 2 of the Docket Report includes a sequential list of docket entries for the above-identified patent application, noting an Appeal Decision entered on May 25, 2005, with no further actions being received until the Notice of Abandonment dated February 22, 2006. Applicants therefore respectfully request that the Notice of Abandonment be withdrawn, and that a Notice of Allowance be reissued.

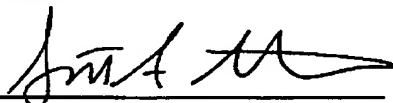
Applicants understand that a Petition fee is not required for requesting withdraw of the holding of abandonment pursuant to 37 C.F.R. § 1.181(a).

In the alternative, if the holding of abandonment is maintained and the above Petition Under 37 C.F.R. § 1.181(a) is denied, Applicants respectfully request that this paper be considered a Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 C.F.R. § 1.137(a). As noted above, Applicants did not receive the Notice of Allowance, and as a result, were not aware of the due date for payment of the issue fee. In that case, Applicants hereby authorize a charge to the Deposit Account No. 23-3000 for the Petition fee associated with the 37 C.F.R. § 1.137(a) Petition for a large entity of \$500.00, as well as a charge to the Deposit Account No. 23-3000 for the associated issue fee of \$1,400.00 under 37 C.F.R. § 1.18(a) for a large entity. Applicants have also attached hereto as Exhibit B a signed Issue Fee Transmittal constituting a reply to the Notice of Allowance, which Transmittal was downloaded by the undersigned from PAIR after receipt of the Notice of Abandonment.

If the Office has any questions regarding this petition, please contact the undersigned attorney for prompt resolution. Moreover, if any other charges or credits are necessary to complete this communication, please apply them to Deposit Account 23-3000.

Respectfully submitted,

6 MARCH 2006
Date


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Page 2 of 2
Serial No. 09/456,211
Petition to Withdraw Notice of Abandonment
Responsive to Notice of Abandonment of 02/22/2006
IBM Docket RO999104
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